IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 2221 OF 2006

Mr. Awadesh S. Pandey ... Petitioner
of Bombay Inhabitant and a
Proprietor of Sunshine
Plastic Industries and
Carrying on business at
A-15, Nanddham Industrial
Estate, Marol Maroshi Road,
Andheri (East),
Mumbai - 400 059.

V/s.

1. Tata Power Company Limited ... Respondents
   a company registered under
   Companies Act 1956 and the
   Licensees under the
   Electricity Act 2003
   having their registered
   office at Bombay House,
   Sir Homy Modi Street, Fort,
   Mumbai - 400 023.

2. Mr. T.P. Mohan, of
   Bombay Inhabitant, and
   working as Assistant General
   Manager, Consumers Relations,
   Tata Power Company Limited,
   having his office at Consumer
   Relations, Corporate Centre,
   34, Sant Tukaram Road,
   Carnac Bunder,
   Mumbai - 400 009.

3. The Electricity Ombudsman
   and Ombudsman appointed
   by the Maharashtra Electricity
   Regulatory Commission, under
   Section 42(6) of the
   Electricity Act, 2003 having
   its office at 606, "KESHAVA"
   Bandra Kurla Complex, Bandra
   (East), Mumbai - 400 051.

Mr. Milind Vasudeo with Mr. A.B. Ketkar for petitioner.
Mr. S.V. Doijode i/b. Doijode & Assoc. for respondents.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED : 5th October, 2006

ORAL JUDGMENT [PER : F.I. REBELLO,J.] :

. Rule. Heard forthwith.

2. The petitioner had applied for electric connection from respondent No. 1. Respondent No. 1 commissioned meter No. 2759592 on the petitioner's premises on 3rd January, 2003 for connected load of 125 HP (93.25 KW). The petitioner started using electricity since 30th August, 2003. Bills for for the period from 30th August, 2003 to 30th October, 2003 and also subsequent bills till November, 2005 were sent to the petitioner indicating multiplying factor of one. Respondent No. 1 around November, 2003 during energy audit observed that petitioner was billed by applying incorrect multiplying factor since beginning, the correct multiplying factor being 40. Supplementary bill was preferred in January, 2006 for Rs. 12,33,328/-.

3. The petitioner contested the said bill by

filing a complaint before Consumer Redressal Forum on 06.03.2006. On 25.03.2006 as the petitioner had not paid electric dues in terms of the bill, respondent No. 1 issued notice of disconnection but withdrew the same. On 05.05.2006 the Consumer Redressal Forum passed an order against petitioner against which petitioner preferred an appeal before the Electricity Ombudsman. The Electricity Ombudsman partly allowed the appeal and directed to recover amended dues under Section 56(2) of the Electricity Act, 2003 (hereinafter referred as "Electricity Act". Respondent No. 1 on 24.07.2006 made demand on the petitioner in a sum of Rs. 11,48,844/-. On 24.07.2006 itself, a notice of disconnection was issued demanding arrears of Rs. 13,17,141=13 paisa after some correspondence as no relief was given to the petitioner. The petitioner filed Writ Petition before this Court being Writ Petition (L) No. 1866 of 2004 challenging the notice of disconnection. In the meantime on 16.08.2006 respondent No. 1 amended earlier demand as the demand was not in conformity with the order of the Electricity Ombudsman. As petition became infructous, liberty was granted to withdraw the petition with liberty to file fresh petition. The petitioners once again by letter of

30th August, 2006 called respondent No. 1 and 2 to withdraw their claim. The petitioner received a third notice of disconnection issued by respondent No. 1 on 04.09.2006 and consequently the present petition.

4. At the hearing of this petition, the learned counsel for the petitioner has submitted as under:

(i) Whether Electricity Ombudsman can pass order retrospectively covering a period from December, 2003 when the Electricity Ombudsman is established in the month of December, 2004.

(ii) Whether the Electricity Ombudsman has jurisdiction to pass impugned order dated 18th July, 2006 allowing back billing for 23 months by amending bills and the regulation system of MERC Regulations, 2006 or part of the disputes have been referred to MERC.

5. For the purpose of considering the controversy what is relevant are the provisions of Section 56 of the Electricity Act which we are gainfully reproducing for the purpose of deciding the issues that have been raised by the petitioner herein.

> "56. Disconnection of supply in default of payment. -(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity

to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting of and reconnecting the supply, are paid, but no longer:

. Provided that the supply of electricity shall not be cut off if such person deposits, under protests,-

(a) an amount equal to the sum claimed from him, or

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the proceeding six months,

whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

6. Insofar as first issued is concerned, the power to recover is under Section 56 of the Act. A

temporary absence or non-appointment of an Electricity Ombudsman cannot defeat the right which otherwise can be claimed by respondent No. 1. Once there be a power and assuming that vacancy of Electricity Ombudsman or Electricity Ombudsman itself has been appointed in December, 2004, would not mean that the authority having jurisdiction is precluded or prohibited from effecting recoveries for the period prior to its appointment. The recovery will, however, be subject to the bar of limitation as contained in Section 56. The Electricity Ombudsman therefore would while exercising jurisdiction, issue an order even in respect of dues which has become due and payable before the establishment of the post of Electricity Ombudsman in December, 2004. The first issue, therefore, has to be rejected.

7. We then come to the next issue as to whether the demand made by respondent No. 1 is contrary to the provision of Section 56 of the Electricity Act. We have already narrated the facts. The Electricity Ombudsman by his order of 18th July, 2006, held that the respondent No. 1 is entitled to recover past dues by correcting multiplying factor. The question posed by the Electricity Ombudsman to itself was whether the

recovery could be made for the entire period of 26 months i.e. for a period from October, 2003 to November, 2005 and that too belatedly in January, 2006. After considering the various provisions including the regulations, the Ombudsman held, only those charges for a period of two years previous to the demand could be recovered and that the arrears for the consumption in January, 2004 became first due in February, 2004 as supplementary bill was raised in 2006 and these dues been within two years are recoverable under the provisions of Section 56(2) of the Electricity Act.

. Submission of counsel for the petitioner is that the provisions of Section 56 do not empower respondent No. 1 to recover any amount if the period of two years has elapsed nor can electricity supply be cut off for non-payment of those dues. In other words, what is sought to be contended is that if the demand or part of the demand is time barred the provisions of Section 56 would not be attracted. We are afraid, we cannot subscribe to that proposition. Section 56(1) is a special provision, enabling the generating company or the licensee to cut-off supply of electricity until such charges or sum as demanded

under Section 56 (1) is paid. Relying on sub-section (2), it was strenuously urged that Section 56(1) cannot be resorted to after the period of two years from the date when such demand became first due. In our opinion, sub-section (2) only provides a limitation, that the recourse to recovery by cutting of electricity supply is limited for a period of two years from the date when such sum became due. As long a sum is due, which is within two years of the demand and can be recovered, the licensee of the generating company can exercise its power of coercive process of recovery by cutting-of electricity supply. This is a special mechanism provided to enable the licensee or the generating company to recover its dues expeditiously. The Electricity Act has provided that mechanism for improvement of supply of electricity and to enable the licensee or generating company to recover its dues. Apart from the above mechanism, independently it can make recovery by way of a suit. In our opinion, therefore the impugned order passed by the Electricity Ombudsman does not suffer from any error apparent on the face of the record and consequently there is no merit in this petition.

8. For all the aforesaid reason Rule discharged.

In the circumstances of the case, however, there shall be no order as to costs.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]